

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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3	COURTNEY LINDE, ET AL.,)	
4)	04CV02799 (BMC)
5	Plaintiffs,)	And all related cases:
6)	04CV05449 (Litle)
7	-against-)	04CV05564 (Almog)
8)	04CV00365 (Coulter)
9)	05CV00388 (Afrait-Kurtzer)
10)	05CV03183 (Bennett)
11)	05CV03768 (Roth)
12)	06CV01623 (Weiss)
13)	
14)	United States Courthouse
15)	Brooklyn, New York
16	ARAB BANK, PLC,)	
17)	THURSDAY, AUGUST 28, 2014
18	Defendant.)	
19)	

TRANSCRIPT OF CIVIL CAUSE FOR JURY TRIAL
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

20	FOR PLAINTIFFS LINDE	OSEN, LLC
21	AND COULTER:	BY: GARY M. OSEN, ESQ.
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(APPEARANCES CONT.)

FOR THE DEFENDANT: DLA PIPER US, LLP
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1 (Outside the presence of the jury.)

2 MR. STEPHENS: Good morning.

3 THE COURT: Good morning. Okay. Rulings from the
4 submissions that I received last night, first of call, the
5 last letter I think I got was from the defendants, concerning
6 the scope of Mr. Spitzen's testimony. My understanding is
7 that all he's going to say about bank and wire transfers is
8 that a payment was made, and beyond that he'll focus on the
9 people to whom such payments were made. I don't read
10 defendant's letter as arguing that Spitzen can't say that the
11 bank made payments to certain individuals; that would rule out
12 most of his expert report, and Judge Gershon let in most of
13 his expert report.

14 I do think that plaintiffs' Slide Number 17,
15 addressing how wire transfers are routed, appears beyond his
16 expertise, and that has to come out. The Geisser charts,
17 which are featured on several slides, are in evidence. I
18 don't know how the plaintiffs intend to use those, but Spitzen
19 wouldn't be qualified to offer any opinion, interpreting them
20 beyond the number of transactions they indicate. Last on
21 that, Slide 3 is unduly argumentative, at this stage of the
22 case, in describing Yassin as "Arab Bank's customer." Take
23 out that legend, please, "Arab Bank's customer." Save it for
24 closing.

25 Next, on the videos, the two videos that plaintiffs

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1 are submitted are not going to be played for the jury. The
2 Australian documentary, Plaintiffs' 1061, appears to just be a
3 video of a Hamas rally. I don't know its relevance, and it is
4 somewhat inflammatory, yes. What's its relevance?

5 MR. OSEN: The speaker in the video is the head of
6 the charitable society at issue in this case. He's the vice
7 chairman of the Nablus Zakat Committee, another charity in
8 this case, and the defendants have put into question whether,
9 in fact, he's, in fact, affiliated with Hamas or whether those
10 organizations are affiliated with Hamas. They are customers
11 of the bank, and that's central to the plaintiffs' case.

12 THE COURT: You know, why am I hearing that now?

13 MR. OSEN: I'm sorry, your Honor?

14 THE COURT: Why am I hearing the proffer of
15 relevance now, as opposed to earlier?

16 MR. OSEN: I think, your Honor, when we had the
17 sidebar on this, in the context of Dr. Levitt's testimony, we
18 had the same issue. The individual, I'm pretty sure,
19 your Honor, I indicated --

20 THE COURT: You're correct, but we didn't have it
21 for this exhibit.

22 MR. OSEN: It's the same video.

23 THE COURT: I see. Okay. I will allow it, on that
24 basis.

25 MR. STEPHENS: Your Honor --

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1 THE COURT: 1061 is the Australian documentary. We
2 didn't admit that.

3 MR. OSEN: No, you didn't admit it, but Dr. Levitt,
4 you said, it could be admitted subject to foundation that
5 Dr. Levitt would have to lay for the document, for the video,
6 and Mr. Werbner did decide to move on to a different subject.
7 But it's the same video, the same relevance.

8 THE COURT: Yes, Mr. Stephens.

9 MR. STEPHENS: Your Honor, it's a huge stretch to
10 say that something that's going on in Australia is probative
11 of anything anybody would have known in the West Bank.

12 THE COURT: Let me reject that argument. They're
13 not just offering it to show what anyone would have known in
14 the West Bank, they're offering it to show the factual
15 connection between the speaker and Hamas, something you have
16 denied. So on that ground, I think it is relevant. What else
17 have you got?

18 MR. STEPHENS: It's prejudicial, your Honor, and
19 deliberately inflammatory. It's also not clear to me how it
20 gets past the Hearsay Rule.

21 THE COURT: It's not being offered for the truth.
22 Nothing he says in the video is being offered in the truth.
23 It's the depiction of him leaving a Hamas rally to show that
24 he's Hamas, and that the organization is connected to Hamas,
25 so I don't think it's a hearsay problem. Cut it way down. I

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1 don't see why it needs to be any more than five seconds, to
2 show that there's a rally and he's there.

3 MR. OSEN: It's more than that, your Honor, if I
4 may.

5 THE COURT: Go ahead.

6 MR. OSEN: Mr. Bitawi is standing on a podium, in
7 front of a two-story high billboard of three other Hamas
8 martyrs, famous leaders of Hamas, who are customers of Arab
9 Bank and who are the subject of Mr. Spitzen's testimony. And
10 so the entire context of the suicide bombers who are listed in
11 the defendant's documents as having committed martyrdom
12 operation, the Hamas leaders whose funeral or wedding is being
13 celebrated, are all integral to the plaintiffs' case.

14 THE COURT: Mr. Stephens.

15 MR. STEPHENS: There's no date data on it either, as
16 to --

17 THE COURT: What's the difference when it occurred?
18 It was after 1988, I'm sure.

19 MR. STEPHENS: It may well have been after 2004.

20 THE COURT: It may well have been, but it still
21 tends to show the connection between the speaker and the
22 organization.

23 MR. OSEN: Also, your Honor, Mr. Spitzen and I
24 believe -- want to be careful until he actually testifies and
25 lays the foundation, but the funeral of Jamal Mansur and Jamal

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1 Salim took place in -- I believe they were killed at the end
2 of July 2001, and this event, which was covered in the
3 newspapers, at the time, since almost all of Nablus was
4 present for it, occurred in, I believe, August 2nd or
5 August 3rd, 2001.

6 THE COURT: As we know. As we know, right? It
7 didn't occur in 2011.

8 MR. STEPHENS: I don't know that, your Honor. I
9 don't know when the film was made, and I don't know whether it
10 is what it purports to be. There's no evidence that it is
11 what it purports to be, and I'm positive --

12 THE COURT: I assume Mr. Spitzen can identify the
13 speaker in the film as a true and accurate representation of
14 this person. He's familiar with this person's likeness,
15 right?

16 MR. OSEN: I believe he's actually met the
17 individual as well.

18 THE COURT: I think that does it, Mr. Stephens, but
19 ten seconds. It seems to me, ten seconds.

20 MR. OSEN: The issue is not the part where
21 Mr. Bitawi leading the pledge, it's that the preliminaries
22 identify other documents that are in -- that will be in
23 evidence in the case. So, for example, before --

24 THE COURT: You send me these things the night
25 before, literally the night before, and you don't give me any

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1 of this detail, and then you expect rulings the next morning.

2 MR. OSEN: Well, I'm sorry, your Honor. I just --
3 this video is actually supposed to have originally been
4 presented with Dr. Levitt, who was going to lay that
5 foundation, so --

6 THE COURT: There should have been a motion in
7 limine before trial so that I'd have the full background on
8 this and many other pieces of evidence, instead of this night
9 before business that you keep doing.

10 MR. OSEN: Well, your Honor --

11 THE COURT: I've never had a trial where I'm
12 expected to make rulings in the morning right before the
13 witness' testimony on complex evidence that the plaintiffs
14 have had for years.

15 MR. OSEN: Well --

16 THE COURT: I don't want to get into that.

17 MR. OSEN: Your Honor, to simplify for a moment,
18 Mr. Bitawi's video is not being played today. We don't
19 anticipate getting that today, and we're happy to make the
20 proffer for anything else that comes after the part we
21 anticipate playing today, so that the Court and the defendant
22 have a full record of it before Tuesday.

23 THE COURT: I just want to tell you this, it's going
24 to have to be cut to the bone. I want the absolute minimum.
25 You might even consider using just stills at various points,

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1 to show what you're using it for.

2 MR. OSEN: We have no objection to that. The only
3 reason we have the full clip of it is so that there's no claim
4 that we have, you know, selectively taken out a piece there.
5 And they have the benefit of it, so we're happy to use stills.

6 THE COURT: Okay. 472 -- I'm sorry. 4712. What's
7 the story on that?

8 MR. TURNER: What was the number again?

9 THE COURT: 4712, the video on the funeral of the
10 Hamas bomb-maker.

11 MR. OSEN: Your Honor, that's from the al-Qassam
12 website Mr. Shaked discussed -- I'm sorry. Bomb-makers
13 discussed yesterday. In addition to being a recipient of the
14 Saudi Committee -- I should say his wife was a recipient of
15 the Saudi Committee payment on his behalf. Mr. Taher's
16 funeral links Mr. Bitawi again, who presided as the religious
17 figure at the funeral, the bomb-maker, and the other gentleman
18 present at the funeral is the father of Salah al-Din Darwazah,
19 featured in the other video, who is also a recipient --
20 actually, Mr. Darwazah's wife, of \$300,000 through Arab Bank.

21 THE COURT: If you're establishing their receipt of
22 funds through other evidence, why do you need the video?

23 MR. OSEN: Well, one of the points raised by
24 Mr. Stephens in opening is that none of these individuals are
25 known to the public. It's a secret organization. No one

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1 knows who these people are, and here is Hamas' own videotape
2 of the funeral, in which not only are they obviously not
3 secretive about Mr. Taher's, but, in addition, people who are
4 linked to the charitable committees, who they claim are not
5 affiliated with Hamas, are presiding at the funeral of a
6 bomb-maker.

7 THE COURT: Mr. Stephens.

8 MR. STEPHENS: Your Honor, here we have a movie made
9 by somebody would we don't know who made it and stuck it on a
10 website that they say is an official website, so you've got
11 now a staged event that they filmed for propaganda purposes
12 that is coming in to show the truth of something. That can't
13 possibly meet the Hearsay Rule, and that can't possibly not be
14 prejudicial.

15 THE COURT: It's not hearsay. What are the
16 statements that are being offered for the truth? What do the
17 speakers say that the plaintiffs want to show the jury is
18 true?

19 MR. STEPHENS: I'm not sure.

20 THE COURT: I think there aren't any. I think it's
21 the association depicted in the photograph that the plaintiffs
22 want to show and have the jury draw an inference from that
23 photograph that there is a connection. That's not hearsay.
24 There's no out-of-court statement in that, so hearsay doesn't
25 bother me. The website has been authenticated, and if the

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1 people in the video are adequately identified as who they are,
2 and a witness says, yes, that is Mr. X, I've seen him, I know
3 him from other sources, then I think it is fair rebuttal to
4 the express argument you made in opening, saying nobody knows
5 who these people are. I think it's fair rebuttal. I'll allow
6 it on that basis.

7 MR. STEPHENS: And how long is it?

8 MR. OSEN: It's about a minute and a half.

9 MR. STEPHENS: Why can't that be put up as stills?

10 THE COURT: It can. It can and it should.

11 MR. OSEN: Your Honor, if I may, I think it would be
12 fair for the plaintiffs to be able to at least show that it's
13 a video. As Mr. Turner did yesterday with Misk, they see
14 the --

15 THE COURT: Twenty seconds.

16 MR. OSEN: That's fine, your Honor.

17 THE COURT: Okay. Plaintiffs' Exhibits 1045, 1206,
18 3286, those are newspapers articles. Those are hearsay.

19 MR. OSEN: They're being offered for the truth.

20 THE COURT: What are they offered for?

21 MR. OSEN: What was the first one?

22 THE COURT: 1045.

23 MR. OSEN: Right. So 1045 is the newspaper article
24 the expert relied upon to determine how the Ansar Society,
25 published its procedures or distributed funds for the martyrs.

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1 The plaintiffs obviously don't have the benefit of the Ansar
2 accounts or payments for reasons known to the Court, and so
3 the expert has pieced together -- we have one document not
4 produced by the bank that we got as a result of the raid of
5 Arab Bank, but the rest of the materials, with respect to
6 Ansar, are from published statements, either from Ansar or the
7 Al-Rantisi Foundation, which describe their activity.

8 THE COURT: Okay. I just -- dealing with the
9 newspaper articles.

10 MR. OSEN: Right. So they are notice, and they are
11 used from a 703 standpoint by the expert to reconstruct what
12 the Hezbollah Yassin Ansar Program -- how it worked, based on
13 open source materials.

14 THE COURT: It was not part of the sanctions,
15 although it could have been that the Hearsay Rule would be
16 waived as to certain evidence. Okay?

17 MR. OSEN: Right.

18 THE COURT: That's not a sanction. The expert can
19 rely on whatever the expert reasonably relied upon. That does
20 not mean that it comes into evidence.

21 MR. OSEN: Your Honor, our point is not whether or
22 not the actual newspaper in this case comes into evidence, but
23 whether the expert can show the jury how he performed his
24 analysis. So even if it doesn't come in to the jury room, we
25 think its beneficial for the jury to understand the process by

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1 which he pieced it together without the benefit of the record.

2 THE COURT: So you're not offering it into evidence,
3 you're simply saying the witness is going to testify to it as
4 the basis for his opinion?

5 MR. OSEN: Correct.

6 THE COURT: Mr. Stephens.

7 MR. STEPHENS: That is simply introducing -- using
8 the expert as a conduit for hearsay. And, secondly,
9 your Honor, this witness that they're offering, this
10 Mr. Spitzen, has already said in his report that Ansar is not
11 connected to Hamas. That's his conclusion.

12 THE COURT: That's for cross-examination.
13 All right. The Rules of Evidence are supposed to be used to
14 make sure that the jury gets to the truth; they're not
15 supposed to be used to obstruct the truth.

16 MR. STEPHENS: Your Honor, how can it be relevant,
17 if Ansar is not part of Hamas, to have a news article about
18 Ansar?

19 THE COURT: You don't know that Ansar is not a part
20 of Hamas. All you've got is, allegedly -- I haven't seen
21 it -- a statement from this expert to that effect. The
22 plaintiffs may have other evidence to put that statement in
23 context. You can't assume the fact you want to prove.

24 MR. STEPHENS: Your Honor, I'm not assuming it.
25 It's in his report.

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1 THE COURT: I'll assume he said it. It's one piece
2 of evidence. I'm not ruling as a matter of law that Ansar is
3 not part of it.

4 MR. OSEN: Your Honor, just to clarify, Mr. Spitzen
5 said he couldn't determine whether Ansar was controlled by
6 Hamas. But the actual issue here is transfers they allegedly
7 made and said they were making to Hamas suicide bombers and
8 others.

9 THE COURT: Well, I had a feeling the admission was
10 not as stark as Mr. Stephens portrayed it, which is why I'm
11 saying the issue is not out of the case just because there's a
12 statement in the expert's report. Nevertheless, I will let
13 you refer to any one of the newspaper articles, any one, based
14 on the witness' testimony that he reviewed a number of
15 articles, and here is an example. He can testify to that as a
16 basis, and, of course, you're free to say to him would it have
17 helped your analysis if you had bank records, and if he says
18 no -- if he says yes, then he'll say yes.

19 I understand the theory that he did the best he
20 could do in light of the bank's refusal to produce records;
21 that's fine. You can bring that out, but that doesn't mean
22 that you get in all hearsay. If you get in all these
23 articles, there is a conduit problem. If you explain the
24 basis of his opinion, as relying on various news reports, and
25 you show one as an example, then I think it is not a conduit

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1 situation.

2 MR. OSEN: Your Honor, looking at it very quickly,
3 but I think we only have one for Ansar, so, in general, we
4 don't intend to tax the jury with multiple readings of various
5 articles, in any event, so one for Ansar is fine, your Honor.

6 THE COURT: That's what I'm prohibiting, the reading
7 of newspaper articles to the jury. All right. That is going
8 to require revisions, I think, on Slide 34.

9 MR. OSEN: Your Honor, 34 is a different issue,
10 however. It doesn't deal with Ansar. The question in 34 is
11 notice with respect to whether the public understood Abdul
12 Khaleq al-Natsche to be a Hamas leader. The defendant has an
13 expert, your Honor, who is going to say that she never heard
14 anyone tell her that any of these committees are Hamas; and
15 she talked to a lot of people, and no one told her any one of
16 these people was a Hamas leader.

17 THE COURT: You know, I'm going to exclude 34. What
18 you can do is the same thing that the defendant did yesterday
19 when their witness is cross-examined; you can say to the
20 witness isn't it a fact that in the Palestinian daily
21 newspapers, Al Hayat Al Jadida, there was this reference? And
22 that will undermine that confession of factual knowledge, but
23 I'm not going to allow the expert to testify to that newspaper
24 article.

25 Okay. Plaintiffs' Exhibit 465 and 502, I have

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1 previously noted that those are admissible. May be admissible
2 on the issue of notice, but how is Mr. Spitzen going to lay
3 the foundation for the introduction of these articles --

4 MR. OSEN: So --

5 THE COURT: -- these advertisements?

6 MR. OSEN: And there will be testimony this morning
7 as well from the videotape, your Honor, of Arab Bank witnesses
8 discussing the phenomenon of Saudi Committee advertisements
9 that invited people to the branches of Arab Bank to collect
10 payments and certain logistical issues that posed for the
11 bank. Mr. Spitzen will testify that part of the process --
12 it's actually a seven-part process of the Saudi Committee
13 Program -- was the notification in publications, in the
14 Palestinian territories, inviting beneficiaries, both martyrs,
15 and prisoners and injured to come to the branches to collect
16 their funds, and we think that's an integral part of the
17 program.

18 THE COURT: How does he know what these
19 advertisements are? Where'd he get them?

20 MR. OSEN: They're newspaper -- I mean, they were
21 published in Palestinian newspapers, and the entirety of the
22 pages of those newspapers have been submitted. The defendants
23 have copies of them, and it's I don't think even a dispute
24 that that, in fact, occurred.

25 THE COURT: Mr. Stephens, I assume you're going to

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1 have witnesses who are going to testify that they had no
2 notice.

3 MR. STEPHENS: No notice of?

4 THE COURT: Of the affiliation, of the fact that
5 money was being solicited for beneficiaries to pick up their
6 money at Arab Bank. Are they going to say that?

7 MR. STEPHENS: They're going to say that some
8 payments were made through the branches and some to people who
9 did not have accounts, and some payments were made to people
10 who did have accounts, mostly through the Needy Family
11 Program, which was 15 or 20,000 people. That's what they're
12 going to say.

13 THE COURT: Right. But are they going to say they
14 didn't know that the families of suicide bombers were to pick
15 up their payments at Arab Bank? I assume so, Mr. Stephens,
16 right? They're not going to say, yes, we knew families of
17 suicide bombers were picking up payments at Arab Bank.

18 MR. STEPHENS: They are going to say they did not
19 see the notation one the one list that was sent to them,
20 because it wasn't important to the transfer of the funds,
21 changes of the names from one to another.

22 THE COURT: The degree of publicity surrounding this
23 advertising campaign is something that the expert can use in
24 determining the existence of the relationship. I will,
25 therefore, allow the advertisements to be used with a limine

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1 instruction that says they're solely on the ground of notice
2 to the bank. That's all the jury is to consider them for.
3 Remind me, Mr. Stephens, if you want that limine instruction
4 at the time they're offered.

5 All right. Next, the website captures particularly
6 the Al-Rantisi interview. It seems to me those are hearsay.
7 I will permit use of one or two of the Saudi Committee and
8 other websites featuring martyrs lists solely as
9 demonstratives to illustrate part of the basis of the expert's
10 opinion, but I will not admit them into evidence.

11 MR. OSEN: Your Honor, may I be heard on Mr. Rantisi
12 for a moment?

13 THE COURT: Yes.

14 MR. OSEN: The Bahrain Forum website that you're
15 referring to is offered as an example and can be for 703
16 purposes only, to show the jury the cross-referencing and
17 checking by the expert, because we do not have the account
18 records of Ahmad Yassin. We have one wire transfer with his
19 bank account number on it, and this is another similar, in
20 fact, to with a happened with Mr. Hamdan, where there's a
21 solicitation of funds in the public to contribute to that
22 specific account, and that is evidence that helps confirm the
23 existence of an account by Sheikh Yassin at Arab Bank.

24 THE COURT: But how do you get around the hearsay
25 objection?

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1 MR. OSEN: Well, I'm not suggesting, your Honor,
2 that the document itself be admitted into evidence, but that
3 the jury would benefit from seeing how the expert went through
4 the process of confirming without the benefit of the account
5 records that this is, in fact, the account of Ahmad Yassin.

6 THE COURT: If the questions are phrased solely in
7 terms of the basis of his opinion, he may testify that there
8 was such an interview. I see no reason to display it to the
9 jury. That, to me, is conduit. It's a conduit problem. And,
10 again, it seem to see me, Mr. Osen, you're seeking to use the
11 sanctions order as a waiver of hearsay. I understand you're
12 saying, oh, well, it's just for the expert opinion, but it
13 doesn't much matter the expert opinion unless it's true. And
14 because of the prejudicial impact it would have, I think the
15 conduit problem is particularly acute. So the expert can talk
16 about it, but I don't want it used.

17 MR. TURNER: Do you have the slide number for that
18 one, your Honor?

19 THE COURT: I think it's Slide 6.

20 Okay. With regard to the Hamas propaganda posters,
21 I have already ruled on that previously. I will permit the
22 use of them as demonstrative only, and I will do the same with
23 regard to the charity brochures; those are demonstrative to
24 support the expert's opinion only. I don't think the
25 prejudicial impact of those is so severe that they can't be

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1 shown to the jury, although not admitted into evidence.

2 Last, the martyr files are obviously important to
3 the expert's opinion. They're also, obviously, hearsay.
4 Here, too, I'm going to permit the use of one or two of those
5 as representative examples for the basis of his opinion. I
6 think it will help the jury assess the validity of his
7 opinion. They will not be admitted into evidence.

8 MR. OSEN: Your Honor, can we make a proffer for
9 Mr. Spitzen, lay the proper foundation that they're actual
10 business records?

11 THE COURT: The martyr poster?

12 MR. OSEN: I'm sorry. The martyr files.

13 THE COURT: Martyr files?

14 MR. OSEN: Yes.

15 THE COURT: You can try. I'm not really seeing it,
16 but you can certainly try.

17 MR. OSEN: Our contention, your Honor, will be that
18 because they're a routine collection of data by the committees
19 to collect data on potential beneficiaries, there are -- what
20 we have are a small subset of hundreds that were generated and
21 collected.

22 THE COURT: I will tell you, frankly, I have not
23 heard an expert authenticate business records that an
24 organization of which he is not a member, solely on the basis
25 of his study of that organization. I think the use of the

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1 exception -- it is generally by a records custodian of the
2 organization, and I think that's part of it. So I don't think
3 an expert can do that, but you want to get me some authority
4 for that, I will consider it.

5 MR. OSEN: Fortunately, we'll have a few days to
6 attempt it.

7 THE COURT: Okay. I would urge both parties to stop
8 this nighttime attack, where I get these exhibits that raise
9 complex evidentiary issues and I'm expected to rule on them by
10 morning. If I'm not expected to rule on them by morning, then
11 let me know when I am expected to rule on them. And if you
12 know they're going to be contentious, and virtually everything
13 in this case has been, then give me something to overcome the
14 objection that you ought to, by this stage, be anticipating.
15 Okay.

16 Anything else?

17 MR. OSEN: Yes, your Honor.

18 THE COURT: Okay.

19 MR. OSEN: Sorry. With respect -- these are all
20 with respect to the videotapes that we hope to play this
21 morning.

22 THE COURT: Yes.

23 MR. OSEN: I just want to check off a couple issues,
24 just because of the late hour in which they were put together.
25 First of all, just for the --

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1 THE COURT: I don't know why that is. Why were they
2 put together at a late hour?

3 MR. OSEN: Because we got your order yesterday
4 evening.

5 THE COURT: That's because I got your designations
6 the prior morning.

7 MR. OSEN: Actually, no, your Honor, in that case,
8 we're innocent; we gave them a few days, and the defendant was
9 late in getting the counter (sic). In any event, your Honor,
10 just the various points, one is there's a glitch in the actual
11 tape, in Excerpt 7, where the screen goes blank while the
12 witness is talking for about ten seconds. We just want to
13 advise the other party about.

14 MR. STEPHENS: Which witness?

15 MR. OSEN: Mr. Saleh, and it's around line 96 --
16 page 9622. One second. All right. Number two, Mr. Kawwas
17 was is introduced in this medley, and he was not previously
18 introduced in the prior ones. We didn't insert any
19 introductory information for him, and neither did the
20 defendants counter. We cut the tape both ways, so if
21 the Court or the defendant prefers the "my name is" part, we
22 have it, but it wasn't in the designation oversight on both
23 parties.

24 MR. INGERMAN: That's fine with us, your Honor.

25 THE COURT: Let's put in who he is, otherwise it

Proceedings

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1 won't mean anything to the jury.

2 MR. OSEN: Next, there are two exhibits referenced
3 in the -- in Exhibit 9, which are not really intended to be
4 put into evidence, but they were overlooked. They were the
5 photographs of Ghazi Hamed and Sheikh Yassin that were shown
6 to the witness, as part of the identification. We just wanted
7 to make the Court aware that -- either show them the
8 photograph that the witness saw or not, but it was omitted, so
9 we wanted to draw that to your attention.

10 THE COURT: But what are you going to do now?

11 MR. OSEN: I think we can either put the photo up
12 that was the exhibit at the deposition, or we cannot show it.
13 We don't actually intend to put the photograph into evidence
14 for the jury, so it's just a question of what the Court
15 prefers on that.

16 THE COURT: I prefer what the parties agreed to.

17 MR. INGERMAN: Well, if it's not going to go into
18 evidence, I don't think there's a reason to show it to the
19 jury.

20 THE COURT: I don't know that the witness' testimony
21 will portray what he's talking about without the photograph.
22 Will it?

23 MR. STEPHENS: Why don't you tell us what lines
24 you're referring to so we can see what the witness is saying.
25 And who is it, please?

Proceedings

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1 MR. OSEN: The very beginning of Exhibit 9.

2 MR. WERBNER: Your Honor, may I step out for one
3 minute?

4 THE COURT: You may.

5 MR. OSEN: First one is Mr. Hamed and -- shown in
6 the picture, and he -- then he discusses who he is, and that
7 he's seen his face before or whatever.

8 THE COURT: I don't think you need the photograph.

9 MR. OSEN: Okay. Lastly, the most substantive one
10 is in Excerpt 9. There are two pieces of testimony in there
11 that are still in the transcript, after your Honor ruled, for
12 which we think raised issues with your Honor's prior ruling on
13 the testimony that relates to witnesses saying that they would
14 have -- a transaction would have been caught by the compliance
15 system and so forth. We have two versions of it, one based on
16 the line designations your Honor gave us yesterday and one
17 where we've excised the two lines in the testimony -- well,
18 there's a few lines of testimony, where the witness says
19 things that we believe are in contravention of your Honor's
20 order.

21 THE COURT: I'm not sure I understand what you just
22 said. You think that my order was mistaken or your
23 designation was mistaken?

24 MR. OSEN: I would say the order's correct. We're
25 not challenging the order at all, but, rather -- if I may,

Proceedings

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1 approach, your Honor, I'll give you a copy.

2 MR. INGERMAN: Maybe he can tell us what it is, what
3 line, what page?

4 MR. OSEN: That mark -- tab-marked the page, which
5 is --

6 THE COURT: Okay. I'll grant the motion to
7 eliminate those portions we're talking about.

8 MR. INGERMAN: Your Honor, may I be heard briefly?

9 THE COURT: Go ahead.

10 MR. INGERMAN: With respect to the request to strike
11 the designation for Mr. Hantoly at page 169, line 24 through
12 170, line 2, he's referring to New York there, and I think
13 that your Honor's ruling allows us to argue and argue that
14 there was compliance check in New York. We produced all the
15 documents from New York, and I think that's consistent with
16 your Honor's ruling, because they're talking about an amount
17 that went through New York. And then he says the relevant
18 authority is there, meaning New York, would have looked into
19 and investigated the wire transfer.

20 THE COURT: I'm not sure. He says the source of the
21 wire transfers to the Arab Bank in Lebanon, and this amount
22 went through New York. So the relevant authorities there, is
23 there New York, or is there Lebanon?

24 MR. INGERMAN: I read it as New York; that's the
25 last thing he said.

Proceedings

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1 THE COURT: Is there a dispute about that?

2 MR. OSEN: I think there's ambiguity there. And the
3 next paragraph addresses the New York part, which we would
4 then move to strike. We don't want to give the impression to
5 the jury that there's relevance to what the Lebanese
6 authorities may have done since it's plural in this case.

7 MR. INGERMAN: Your Honor, you're going to give, you
8 said, an instruction to the jury that they can only consider
9 compliance, so that would cure any problem --

10 THE COURT: Depending on your evidence.

11 MR. INGERMAN: Ambiguity.

12 THE COURT: I think when you read what follows the
13 part that Mr. Osen wants to strike, it is clear he's talking
14 about the relevant authorities in New York, so I'm going to
15 allow that.

16 MR. INGERMAN: Then, with respect to the second
17 motion to strike by the plaintiffs, which is Mr. Dabbour, at
18 page 248, line 13, through 249, line 2, he's talking about
19 compliance with respect to the Palestinian Monetary Authority,
20 which my understanding was we can put general compliance
21 evidence on, and your Honor would give an appropriate
22 instruction if he felt it was so. So this is, in our view, a
23 general compliance information about what the Palestinian
24 Monetary Authority did in Palestinian territories.

25 THE COURT: That's not general. That's not general.

Proceedings

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1 That's specific. I'm going to strike that part. Okay.

2 Anything else?

3 MR. OSEN: That was it, your Honor.

4 THE COURT: Okay. Let's have the jury, please.

5 (In the presence of the jury.)

6 THE COURT: All right. Be seated, please. Good
7 morning, ladies and gentlemen.

8 THE WITNESS: Good morning.

9 THE COURT: Sorry for the delay, the brief delay we
10 had this morning. We had some legal issues we had to work
11 through. We're ready now.

12 Plaintiffs may call their next witness.

13 MR. TURNER: Your Honor, at this time, we're going
14 to play a collection of excerpts from videotape.

15 THE COURT: Okay. Please proceed.

16 MR. TURNER: The topic on seven has to do with the
17 Saudi Committee.

18 THE COURT: Okay.

19 (Video played for the jury.)

20 (Proceedings continued on the following page.)

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PROCEEDINGS

1381

1 (Videotape Deposition of Mazen Abu Hamdan continues
2 to be played.)

3 THE COURT: Stop the tape a moment. Stop the
4 tape.

5 About how much longer do you think?

6 MR. OSEN: Your Honor, there is one more person on
7 this excerpt after Mr. Abu Mazen, but I believe we can stop
8 it when this portion is over, which should be in a few
9 minutes.

10 THE COURT: Okay. Let's do that. Continue.

11 (Videotape deposition of Mr. Mazen Abu Hamden
12 continues to play.)

13 THE COURT: All right. Let's take our morning
14 break, ladies and gentlemen, we'll reconvene at 11:40.
15 Please don't talk about the case. See you in just a few
16 minutes.

17 (Jury is out of the courtroom at 11:24 a.m.)

18 THE COURT: Please keep in mind I'm going to need
19 to stop at 4:00 or slightly after 4:00 today, not going all
20 the way to 4:30 so when you present the case, think about
21 that.

22 MR. TURNER: We were actually going to ask you if
23 we can stop a little bit before that so that some of these
24 folks can catch planes home to see family, like, around
25 3:30.

PROCEEDINGS

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1 MR. SHAND: I don't have an objection to that,
2 your Honor.

3 THE COURT: I really -- the case is taking longer
4 than I wanted to, but, okay, we'll have a long weekend.
5 3:30 we'll stop. 15 minutes.

6 (Proceedings were recessed and recalled.)

7 (Honorable Brian M. Cogan takes the bench.)

8 THE COURT: Please bring in the jury.

9 (Jury is in the courtroom at 11:44 a.m.)

10 THE COURT: Be seated. We'll continue the video.

11 (Videotape deposition of Fazwan Shukri is being
12 played.)

13 THE COURT: All right.

14 MR. OSEN: Your Honor, with your permission, we'd
15 like to play excerpt eight.

16 THE COURT: Go ahead. Continue.

17 MR. INGERMAN: Your Honor, just -- could we have a
18 quick sidebar?

19 (Continued on the next page for sidebar.)
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SIDEBAR CONFERENCE

1383

1 (Sidebar conference begins.)

2 MR. INGERMAN: I didn't want to do this in front
3 of the jury. I have Kawwas and Shukry Bishara too as part
4 of Excerpt 7.

5 MR. OSEN: I'm sorry. We are not playing Kawwas
6 or Bishara, we've just withdrawn them.

7 THE COURT: Okay. Those are withdrawn.

8 MR. INGERMAN: Okay.

9 (End of sidebar conference.)

10 (Continued on the next page.)

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PROCEEDINGS

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1 (Videotape deposition of Mohammad al-Tahan and
2 Fazwan Shukri is being played.)

3 MR. OSEN: Your Honor, that concludes excerpt
4 eight. And we would request lunch before excerpt Excerpt 9.

5 THE COURT: We'll do that. Ladies and gentlemen,
6 have a good lunch. Please do not talk about the case, do
7 not discuss the case. We're going to have a somewhat short
8 day today so you can all make preparations for the holiday
9 weekend. Please return promptly at 2:00. We'll start right
10 then.

11 (Jury exits the courtroom at 12:56 p.m.)

12 THE COURT: Okay. Recess until 2:00. Thank you.

13 (Proceedings were recessed at 12:57 p.m.)

14 (Continued on the next page.)

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Proceedings

1385

1 (Outside the presence of the jury.)

2 THE COURT: Please bring in the jury.

3 Who do we have next?

4 MR. TURNER: We've got about a 25-minute tape,

5 Number 9.

6 THE COURT: Then you're going to start Spitzen?

7 MR. TURNER: Then we're going to start Spitzen.

8 (In the presence of the jury.)

9 THE COURT: Be seated. Plaintiffs may proceed.

10 MR. TURNER: Your Honor, our next excerpt is Excerpt

11 Number 9, which is a collection of five individuals, Hantoly,

12 Kawwas, Dabbour, Al-Tahan and Sadeq, addressing Arab Bank's

13 knowledge of certain individuals.

14 THE COURT: All right.

15 MR. TURNER: It's about 25 minutes.

16 (Video played for the jury of Hantoly, Kawwas, Dabbour,

17 Al-Tahan and Sadeq)

18 MR. INGERMAN: Your Honor.

19 THE COURT: Stop the tape, please.

20 MR. INGERMAN: Quick sidebar. I think we missed

21 something.

22 (Sidebar held outside the presence of the jury.)

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Sidebar

1386

1 THE COURT: Too much or too little?

2 MR. INGERMAN: I think we left something out, unless
3 my notes are wrong, I think, for Dabbour, page 320, line 9
4 through 17, and then 325, line 2 through 11.

5 THE COURT: Let me check my notes.

6 MR. OSEN: I'll go get mine.

7 MR. INGERMAN: Your clerk will find it faster than
8 anyone, I'm sure.

9 THE COURT: No, I'm not.

10 MR. INGERMAN: May I show him the --

11 THE COURT: Yes. Sure.

12 MR. INGERMAN: My mistake. I apologize.

13 (Sidebar concluded.)

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Proceedings

1387

1 (In the presence of the jury.)

2 THE COURT: All right. Let's continue.

3 (Video continued for the jury.)

4 MR. TURNER: That concludes Excerpt 9. Our next
5 witness is Arie Spitz.

6 MR. INGERMAN: Your Honor, could we approach for
7 just a minute before he takes the stand?

8 THE COURT: Sure.

9 (Sidebar held outside the presence of the jury.)

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Sidebar

1388

1 (Sidebar.)

2 MR. STEPHENS: I just had a chance to look at these
3 more closely. This one talks about use of --

4 THE COURT: Say it again.

5 MR. STEPHENS: A person with a name Hisfeliach
6 (phonetic), identical to that, is connected to this
7 organization, which he then says is Hamas in his report. He
8 said nothing about that at all. What he said was that he
9 needed his full name, nicknames, place of residence, origin
10 and his identity card to be sure who he was, so --

11 MR. OSEN: I think he identifies him in his report
12 exactly that way.

13 THE COURT: We're going to allow it and leave it for
14 cross-examination, if he's coming up with stuff not in his
15 report or deposition.

16 MR. STEPHENS: One other thing, 39.

17 MR. TURNER: We won't get to 39 today.

18 THE COURT: We're here. Go ahead.

19 MR. STEPHENS: Thirty-Excerpt 9 is a whole list of
20 organizations.

21 THE COURT: Yes.

22 MR. STEPHENS: And I thought your Honor's ruling was
23 that if there was some reliance by the excerpt on designations
24 that could be had, that is intended to show to the jury.

25 THE COURT: As demonstrative. Not coming into

Sidebar

1389

1 evidence, but as demonstrative, yes, that's okay.

2 (Sidebar concluded.)

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Spitzen - Direct - Turner

1390

1 (In the presence of the jury.)

2 THE COURT: Let's swear the witness.

3 THE CLERK: Please stand. Raise your right hand.

4 Do you solemnly state or affirm that the testimony you shall
5 give to the Court shall be the truth, the whole truth and
6 nothing but the truth?

7 THE WITNESS: I affirm.

8 THE CLERK: Please state and spell your name for the
9 reporter.

10 THE WITNESS: Spitzen, S-p-i-t-z-e-n, ArieH,
11 A-r-i-e-h, Dan, D-a-n.

12 ARIEH DAN SPITZEN,
13 called as a witness, by and on behalf of the plaintiff, having
14 been first duly sworn, was examined, and testified as follows:

15 THE CLERK: Thank you. You may be seated.

16 THE COURT: I'll note the interpreters have been
17 previously sworn.

18 You may inquire.

19 MR. TURNER: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MR. TURNER:

22 Q Give us your name, please.

23 A ArieH Spitzen.

24 Q Where do you live, Mr. Spitzen?

25 A Jerusalem, sir.

Spitzen - Direct - Turner

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1 Q Were you born and raised in Israel?

2 A Yes, sir, in Jerusalem.

3 Q Do you speak English?

4 A I speak English. I understand English. I read and write
5 English.

6 Q And do you speak Arabic?

7 A Yes, I do speak Arabic.

8 Q Now, you've chosen to testify in Hebrew today; why is
9 that?

10 A I chose to give my testimony in Hebrew and because I'm
11 actually giving testimony under oath, and my ability to
12 express myself in Hebrew is the best one, especially since I'm
13 talking about technical and legal matters.

14 Q Now, between 2001 and 2009, where were you employed?

15 A In the IDF.

16 Q And what is the IDF?

17 A It is the Israeli Defense Force, and this is the military
18 of the state of Israel, and this is where I serve.

19 Q What department or division within the IDF did you work?

20 A In COGAT.

21 Q What was COGAT?

22 A COGAT, or the Coordinator Of Government Activities in the
23 Territories is a body that belongs both to the military, the
24 IDF and the Ministry of Defense, and is responsible for the
25 implementation of the policy of the government of the state of

Spitzen - Direct - Turner

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1 Israel in the Palestinian Territories.

2 Q And during that period of time, 2001 through 2009, what
3 was your job responsibility within COGAT?

4 A I was the head of the Palestinian Affairs Department and
5 the adviser of the head of COGAT on Palestinian matters.

6 Q What were your day-to-day responsibilities in that job?

7 A My job was to actually give a certain picture, a civilian
8 picture, concerning what was happening in the West Bank in
9 Gaza, to describe what was happening from every possible
10 perspective; the civilian, the economic, the cultural, the
11 education, in order to allow the decision-makers in Israel to
12 make their decisions concerning the territories.

13 Q Were you involved in intelligence work, in working with
14 the COGAT?

15 A Yes, sir.

16 Q Were you responsible for research as well?

17 A Yes, I did direct the research and collection as head of
18 the PAD.

19 Q And did people working for you likewise have
20 responsibility for collecting intelligence from the
21 Palestinian territories?

22 A Yes. Definitely.

23 Q Now, let's back up for a second. What is your
24 educational experience?

25 A I'm a graduate of Hebrew University in Jerusalem, Cum

Spitzen - Direct - Turner

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1 Laude, specializing in Middle East, Arabic and the history --
2 the Jewish history or the history of the Jewish people. This
3 is as far as my academic education is concerned.

4 Q When did you first join the IDF? What year?

5 A In 1970.

6 Q And when you first joined the IDF, what branch were you
7 in? What area did you concentrate in, in the military?

8 A I joined the navy, and I was what is called a "frog man."

9 Q Is that similar to the Navy SEALs?

10 A Yes, this is the unit.

11 Q Now, at some point in time, did you transfer into the
12 intelligence side of the IDF, between 1970 and 1974?

13 A Yes, I was transferred to the Intelligence in 1972.

14 Q And did you attend college between 1974 and 1976?

15 A This is correct.

16 Q Did you return to Military Intelligence in 1976?

17 A Not to the Intelligence but to the Palestinian Affairs
18 Department in the West Bank.

19 Q And how long did you stay in that position?

20 A I served there for two years, and then I returned in 1980
21 to the very same department, where I continued to serve for
22 30 years.

23 Q Now, during the period of time, this 30-year period, did
24 you have an opportunity to participate in, conduct in, review
25 intelligence from the West Bank and Gaza?

Spitzen - Direct - Turner

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1 A Yes. Definitely. I founded the research department for
2 the Adviser on Arab Matters in the West Bank, and I wrote many
3 papers in this research field.

4 Q Now, at our request, have you had an opportunity to
5 evaluate certain charitable institutions or societies and also
6 some Zakats, what's referred to as Zakat, that operated in the
7 West Bank and Gaza during the 1999 through 2005 time frame?

8 A Yes, definitely.

9 Q And at our request, have you, likewise, had an
10 opportunity to evaluate some money transfers that took place
11 during that same period of time at the Arab Bank?

12 A Yes. Definitely.

13 Q And, likewise, have you had an opportunity at our request
14 to evaluate a program called the Saudi Committee, in support
15 of the Intifada al Quze?

16 A Yes, sir.

17 Q Now, during that process, can you give us sort of an idea
18 of how many years have you been working on this project?

19 A I have been working on this project of Arab Bank since
20 2010, almost to this very day.

21 Q So almost four years' worth of work on this particular
22 project?

23 A Yes, sir.

24 Q And can you give us an approximation of how many hours
25 you personally and your research assistant have spent on this

Spitzen - Direct - Turner

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1 particular issue or group of issues?

2 A Yes, sir.

3 Q Now, during the course of your work -- go ahead and tell
4 us the number of hours, please.

5 A It's a bit over 3,000 hours, but 3,100 hours.

6 Q And during the course of your work on this particular
7 project, have you run into some difficulty from time to time,
8 due to the lack of having access to some records?

9 A Not here and there, but right from the start.

10 Q Now, has that created any complications for you in your
11 analysis of the issues you were asked to address?

12 A Yes, that created difficult problems, especially when it
13 came to identifying names.

14 Q Now, as a result of those complications, did you have to
15 expend extra hours and efforts in order to try to piece
16 information together?

17 A Yes. Definitely. I believe it required twice or three
18 times more effort than had I had all those papers in front of
19 me.

20 Q Now, how many years have you been aware of a terrorist
21 group called Hamas?

22 A From 1987, the year it was founded in.

23 Q And how many years has -- at least the department you
24 were working in for the last 30 years, how many years has your
25 department and the people working for you considered Hamas to

Spitzen - Direct - Turner

1396

1 be a terrorist organization?

2 A Right from the very first moment it was founded.

3 Q During the relevant time frame, did Hamas have access to
4 a TV station?

5 A At a certain point in time, they start having a
6 television station, but I cannot recall the exact date.

7 Q How about radio stations?

8 A Radio stations, they did have them. From the 1990s from
9 1996, they had local radio stations, as well as Radio Alaqsa,
10 which was their main radio station.

11 Q How about newspapers?

12 A Yes, they did have newspapers, different kinds of
13 newspapers. But in this particular time frame, they had two
14 main ones, El Musla (phonetic), and the other one was Al
15 Esella (phonetic).

16 Q During the course of your experience in the IDF, did you
17 become aware of the original, what they call, cofounders of
18 Hamas back in the 1980s?

19 A In 1987, yes. Definitely.

20 Q Now, have you prepared a slide to illustrate the
21 individuals who were considered to be the cofounders of Hamas?

22 A Yes, sir.

23 Q And would it help you illustrate those individuals?

24 A Yes, sir.

25 Q And your slide has some photographs on it. Do you

Spitzen - Direct - Turner

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1 personally know those people, and are the images accurate
2 depictions of those individuals?

3 A Yes, of course. These are well-known people. They
4 appear in dozens of media outlets, on various opportunities
5 (sic). I know them well, and there's no problem in
6 identifying them.

7 MR. TURNER: Your Honor, may I display Slide Number
8 2?

9 THE COURT: You may.

10 Q Now, Mr. Spitzen, first of all, beginning at the top,
11 Sheikh Yassin -- we've already had a lot of testimony about
12 Sheikh Yassin. He deceased; is that correct?

13 A No, Sheikh Yassin was killed by the IDF in March, 2004.

14 Q Who is Salah Shehadeh?

15 A Salah Shehadeh was one of the senior leaders of Hamas.
16 He was one of the founders of Hamas. He founded the military
17 wing of the Qassam Brigades of Hamas. He, too, was killed in
18 2002 by the IDF.

19 Q Was he a secret individual, or was he well known in the
20 public or in the media?

21 A Salah Shehadeh was a well-known person to the public. He
22 served in advanced area of positions, also at the University
23 of Gaza. When he was released from prison in 2002, Gaza
24 celebrated. He was a well-known person, both by the local and
25 foreign media. Yes, he was very popular.

Spitzen - Direct - Turner

1398

1 Q The bottom row -- I'm sorry.

2 THE INTERPRETER: He corrects the date. It was in
3 2000 that he was released from prison.

4 Q Looking across the bottom at the six individuals'
5 photographs that we're looking at, were all those individuals
6 located in one particular part of the Palestinian Territories,
7 or were they each responsible for different areas?

8 A No, they were all from the Gaza Strip, every one of them,
9 but on top of the fact that they founded Hamas, each one of
10 them was also appointed as a military commander of their
11 residential area where they live.

12 Q Now, have you been able to determine from the few records
13 you do have access to whether or not any of the seven
14 individuals shown on the screen were customers of Arab Bank,
15 had bank accounts at Arab Bank during the relevant time frame?

16 MR. STEPHENS: Objection, your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: Yes, several people on the slide had a
19 bank account at Arab Bank.

20 Q Have you had an opportunity to review the full set of
21 Arab Bank customer files and account files for the individuals
22 shown on this slide that were customers of Arab Bank during
23 the Intifada?

24 A Unfortunately, no.

25 Q Why?

Spitzen - Direct - Turner

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1 MR. STEPHENS: Objection, your Honor.

2 THE COURT: Overruled. You may answer.

3 THE WITNESS: Because Arab Bank had refused to
4 transfer to me the bank records, the account records of these
5 individuals.

6 Q Now, let's begin with Sheikh Yassin. Was he a customer
7 of Arab Bank in the 2003 and 2004 time frame?

8 A Yes, sir.

9 Q When was he known and recognized as a terrorist in
10 Israel?

11 A He was recognized in Israel as a terrorist already back
12 in 1983. He was arrested for being involved in a terror
13 organization, which he had founded.

14 Q Now, when was he formally -- Sheikh Yassin, formally
15 designated by the United States Government as a foreign
16 terrorist?

17 A As far as I know, it was in 1995.

18 (Proceedings continued on the following page.)
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A. SPITZEN - DIRECT/MR. TURNER

1400

1 MR. TURNER: Would you please show the witness
2 only Exhibit 1353.

3 Q Do you recognize Exhibit 1353?

4 A Yes, sir.

5 Q And what is Exhibit 1353?

6 A This is designation by the United States Treasury from
7 2003, and it also mentions the fact that Sheikh Yassin had
8 already been recognized or designated as a terrorist back in
9 '95.

10 MR. TURNER: We offer 1353.

11 THE COURT: Any objection?

12 MR. SHAND: No objection.

13 THE COURT: Received.

14 (Plaintiff Exhibit 1353 was admitted into
15 evidence.)

16 MR. TURNER: May we display page two? Go down to
17 the very bottom -- I'm sorry, three, to the footnote. Blow
18 the footnote up for us.

19 Q Can you see that okay, Mr. Spitzen?

20 A Yes, I can see it.

21 Q Now, this particular footnote says, "Yassin was
22 previously designated and therefore is already subject to
23 sanctions pursuant to executive order 12947 of January 23,
24 1995, prohibiting transactions with terrorists who threaten
25 the middle east peace process. He is being designated

A. SPITZEN - DIRECT/MR. TURNER

1401

1 pursuant to EO 13224 based on his continued support for
2 terrorism."

3 Is that the reference you made earlier to 1995?

4 A Indeed so, sir.

5 Q Now, out of the limited information you did have access
6 to, were you able to find any wire transfers to Sheikh
7 Yassin in 2001 that went through the Arab Bank?

8 A Yes, sir.

9 MR. TURNER: Your Honor, we may display 2080, one
10 of the previously admitted exhibits as the wire transfer to
11 Sheikh Yassin?

12 THE COURT: Yes.

13 MR. TURNER: Show the wire transfer first and then
14 we'll show the slide.

15 Q What is the date of this wire transfer, Mr. Spitzen?

16 A This is a say bank transfer from May 30, 2001.

17 Q And who is the beneficiary of this transfer of \$60,000?

18 A Ahmad Ismail Yasmine.

19 Q What the account number shown for Ahmad Ismail Yasmine
20 at Arab Bank?

21 A 36444.

22 Q Now, have you been able to confirm through other
23 sources that account number 36444 in 2001 was, in fact, the
24 account at Arab Bank for Sheikh Ahmad Yassin, leader of
25 Hamas.

A. SPITZEN - DIRECT/MR. TURNER

1402

1 A Yes, sir.

2 Q How were you able to confirm that?

3 MR. SHAND: Your Honor, may we approach?

4 THE COURT: Yes.

5 (Continued on the next page for sidebar.)

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SIDEBAR CONFERENCE

1403

1 (Sidebar conference begins.)

2 MR. SHAND: I'm not quite sure what he said, but
3 my guess is this website.

4 THE COURT: Yeah, that's what I said he could do.
5 He could say what he relied on, they cannot show the
6 interview. It's part of the basis for his opinion.

7 MR. OSEN: I'm sorry to interrupt, I don't think
8 there is any white noise on for the jury.

9 THE COURT: I mean, that's perfectly consistent
10 with my ruling. I said, don't use the slide, don't use the
11 interview, but he can say the basis of his opinion.

12 (End of sidebar conference.)

13 (Continued on the next page.)
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A. SPITZEN - DIRECT/MR. TURNER

1404

1 BY MR. TURNER:

2 A This account was actually shown on the internet. It
3 was part of an interview with Abd al-Aziz al-Rantisi. We
4 saw his picture previously. And it was conducted in a forum
5 that's called a bahrain (phonetic) forum. In this interview
6 Rantisi called people to donate to Hamas through the bank
7 account of Sheikh Yassin, and he gives the number of the
8 bank account in that interview 36444.

9 Q So the two bank accounts; the one seeking donations and
10 the bank account for this wire transfer, both in the name of
11 Ahmad Yassin are one in the same?

12 MR. SHAND: Objection, your Honor.

13 THE COURT: Sustained as to form.

14 Q Are the account numbers different or the same?

15 A This is the same bank account number and also the same
16 branch of the bank.

17 MR. TURNER: Now, if we can go to slide number
18 four. May we display slide number four?

19 THE COURT: Wait one second. Let me set up.
20 Okay. You're going directly to slide four, right?

21 MR. TURNER: Yes, sir.

22 Q Mr. Spitzen, were you able to determine who sent Sheikh
23 Yassin the \$60,000 based on the wire transfer?

24 A Yes. The transfer was wired from Lebanon by Yousef
25 al-Hayek.

A. SPITZEN - DIRECT/MR. TURNER

1405

1 Q Who is Yousef al-Hayek?

2 A Unfortunately, I don't know exactly who Mr. al-Hayek
3 is, but I do have several assumptions regarding his
4 identify.

5 Q Were you able to receive the bank account records from
6 Arab Bank for Yousef al-Hayek?

7 A No, sir.

8 Q Why?

9 A Because the bank had refused to hand it over.

10 Q Were you to be able conduct any investigation to see if
11 you could determine who Yousef al-Hayek was?

12 A Yes, I did manage to conduct an investigation and
13 indeed reach certain conclusions, but these conclusions are
14 highly probable; yet, they are not 100 percent certain.

15 Q What did your investigation reveal about Yousef
16 al-Hayek?

17 A I tried to find out who he was based on his name, based
18 on the geographic location where he was situated or
19 according to the kinds of activities he was involved in.

20 Q And what did you learn?

21 A I found out that al-Hayek probably operates from
22 Lebanon, that he's connected to Hamas leaders, that he wired
23 funds to Hamas leaders, that he is somehow connected to
24 them. I also learned that there is a person with a similar
25 name who heads a certain institution or organization which

A. SPITZEN - DIRECT/MR. TURNER

1406

1 transfers funds to people, to individuals from Hezbollah and
2 to Palestinians; that is, he transfers funds to families of
3 Hezbollah operatives and also transfers funds to families of
4 Palestinians in the Territory.

5 MR. TURNER: Would you show the witness only,
6 please, Exhibit Number 90.

7 Q Do you recognize Exhibit Number 90, Mr. Spitzen?

8 A Yes, sir.

9 Q And what is Exhibit Number 90?

10 A This is the check that's for \$10,000 written to Yousef
11 al-Hayek, and it is given from the account of Osama Hamdan
12 from the bank branch in Mazraa, Beirut.

13 Q Which bank?

14 A The Arab Bank in Mazraa, Beirut.

15 MR. TURNER: We offer Exhibit 90.

16 THE COURT: I think there was no objection to this
17 one?

18 MR. SHAND: No objection.

19 THE COURT: All right. It's received.

20 (Plaintiff Exhibit 90 was admitted into evidence.)

21 MR. TURNER: May we put Exhibit 90 on the screen?

22 Q Is this the check you were referencing, Mr. Spitzen?

23 A Yes, sir.

24 Q Now, let's go back to slide number 90, if we could,
25 please.

A. SPITZEN - DIRECT/MR. TURNER

1407

1 Now, there has already been some testimony about
2 Osama Hamdan, but very briefly, can you tell us who Osama
3 Hamdan was at the time of this check?

4 A Okay. Yes, sir.

5 Q Now, there is three other exhibits that are in evidence
6 and we won't spend a whole lot of time on these exhibits,
7 but they are Exhibits 136, 140 and 106. And just for
8 purposes of brevity, could you put 136 on the screen --

9 MR. TURNER: Or may we do so, your Honor?

10 THE COURT: These are all pre-admitted, right?

11 MR. TURNER: These were admitted earlier with
12 another witness. They are in evidence.

13 INTERPRETER: The witness would like to add
14 something.

15 MR. TURNER: I'm sorry. Did I interrupt?

16 THE WITNESS: I just said I could say who he was
17 at the time, but I didn't say yet who he was, Osama Hamdan.

18 Q Okay. Go ahead.

19 A Osama Hamdan was a representative, a delegate of Hamas
20 in Lebanon. Hamas had delegations and missions in many
21 countries, and the one in Lebanon was considered a very
22 important, very senior delegation.

23 Q Now, did you have access to three wire transfers marked
24 as Exhibits 136, 140 and 106 referencing Osama Hamdan's
25 account at the Arab Bank?

A. SPITZEN - DIRECT/MR. TURNER

1408

1 A Yes, sir, I did have access to these three transfers.

2 MR. TURNER: May I have slide 11, please.

3 Q Now, just for purposes of very briefly going back over
4 this, this wire transfer -- whose account did this wire
5 transfer go to?

6 A This wire transfer deposited in Osama Hamdan's account.

7 Q Who was the beneficiary of these funds?

8 A The beneficiary, as it's stated, it states there is
9 Harakat al-Muqawama al-Islamiyah; in other words, the
10 Islamic Resistance Movement Hamas.

11 MR. TURNER: May we have Exhibit 4766 displayed,
12 your Honor? That's in evidence.

13 THE COURT: Yes.

14 Q Are you familiar with this chart from Mr. Geisser,
15 based upon his summary of certain transfer information,
16 specifically relating to Yousef al-Hayek wire transfers via
17 Arab Bank New York?

18 THE COURT: I don't think you displayed it yet.

19 A Yes, sir.

20 Q How many transfers were found in those limited group of
21 records from Yousef al-Hayek?

22 A 282 transfers by Yousef al-Hayek.

23 Q For what dollar amounts?

24 A \$4,228,193.

25 MR. TURNER: Now, there was also an exhibit

A. SPITZEN - DIRECT/MR. TURNER

1409

1 admitted, 4764, in Mr. Geisser's testimony. May we display
2 that.

3 THE COURT: Yes.

4 Q Now, this particular chart was labeled, "Arab Bank New
5 York Branch Transactions. Summary of Transactions
6 Identified Individual Yousef al-Hayek With a List of Those
7 Receiving Money From al-Hayek." Now this particular exhibit
8 has checkmarks at the side. Did you place those checkmarks
9 on this exhibit?

10 A Yes, sir.

11 Q And what do those checks represent, Mr. Spitzen?

12 A Those checks represent the transfers that I could
13 identify as aimed at leaders or operatives of Hamas.

14 Q And there is 27 if I counted correctly. Is that your
15 count?

16 A I trust your counting.

17 Q Now, in the process of going through the al-Hayek
18 transfers, did you have an opportunity to prepare a summary
19 sheet, an illustration of the transfers that were designated
20 from al-Hayek to various Hamas leaders and operatives?

21 A Yes, sir.

22 MR. TURNER: May we display his chart, your Honor.

23 THE COURT: Yes.

24 MR. TURNER: This is slide 16.

25 Q Now, first of all, there is a category for sender; is

A. SPITZEN - DIRECT/MR. TURNER

1410

1 that correct?

2 A Yes, sir.

3 Q And then one for the number of transfers that you
4 found?

5 A Yes, sir.

6 Q And then one category for amount; is that correct?

7 A This is correct, sir.

8 Q Now, reading across the first line, "Hayek," can you
9 explain what you mean by 223 and then the dollar value?

10 A Yes, sir.

11 Q Go ahead.

12 A The 223 are people that I managed to identify as being
13 senior officials or leaders or family members of Hamas to
14 whom the money was transferred of the 282 names mentioned
15 earlier.

16 Q And just so we put a timeframe on this, what is the
17 timeframe we're talking about in this chart?

18 A Between 2000 to 2001.

19 Q So over that one-year period of time that much money
20 was transferred through what bank?

21 A Arab Bank.

22 Q Now, go to the second line. The "others" with the two
23 asterisks. Explain to us that particular line and the
24 meaning of that line.

25 A Yes, I can.

A. SPITZEN - DIRECT/MR. TURNER

1411

1 Q Go ahead.

2 A I examined beyond those transfers made by Hayek,
3 additional wire transfers, mostly from Lebanon through Arab
4 Bank New York to the Palestinian Territories, and I found
5 another 32 wire transfers, these were not done by Hayek, but
6 rather, by different other peoples. Those wire transfers
7 were for Hamas leaders and their family members. And these
8 are the ones that I could identify that were done through
9 Arab Bank.

10 Q Now, during the course of your investigation, given the
11 limited records that you had access to, were you still,
12 despite the limitations, able to identify a significant
13 group of Hamas leaders during the period of 2000 through
14 2002 that had actual bank accounts at Arab Bank in the
15 Palestinian Territories?

16 A With a high degree of probability, yes.

17 Q And have you been able to crosscheck the names to
18 ensure the accuracy of the information that you were able to
19 glean from the limited amount of records you did have access
20 to?

21 A I did the best I could and I invested by best
22 professional efforts in doing my work while comparing these
23 names and the way they are written in many places, that I
24 could not reach absolute accuracy.

25 MR. TURNER: May we display slide 18?

A. SPITZEN - DIRECT/MR. TURNER

1412

1 THE COURT: Yes.

2 Q Now, there are ten individuals shown on this first
3 slide. And the label on slide is "Transfers Through Arab
4 Bank New York to Arab Bank Accounts of Hamas Leaders and
5 Operatives in Gaza 2000 through 2002."

6 Of course, the first photograph is Sheikh Yassin;
7 is that correct?

8 MR. SHAND: Objection, your Honor.

9 THE COURT: One word?

10 MR. SHAND: May we approach?

11 THE COURT: Really? Is it worth it?

12 MR. SHAND: I'm not sure.

13 THE COURT: Okay.

14 (Continued on the next page for sidebar.)
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SIDEBAR CONFERENCE

1413

1 (Sidebar conference begins.)

2 THE COURT: I just didn't see what could be
3 objectionable about that question, it's just preparatory to
4 what's coming next.

5 MR. SHAND: But it's not preparatory because
6 Mr. Turner is saying this is transfers to 16 Hamas leaders,
7 not "in your opinion" or "who are they" or anything like
8 that, he's making the designations.

9 THE COURT: Is it the objection that the question
10 was leading?

11 MR. SHAND: It's misleading, actually. And it is
12 leading and --

13 THE COURT: I'll ask him to refrain from leading
14 questions, but these are the expert's conclusions. These
15 are his opinions, which he's plainly said. And so the slide
16 simply presents his conclusions.

17 MR. SHAND: I'm not arguing about the slide, your
18 Honor. I'm arguing about the phraseology of the questions
19 and --

20 THE COURT: Okay. I will ask Mr. Turner to phrase
21 the question in a more neutral manner to draw the answer out
22 rather than suggesting it. Oh, Mr. Turner, what do you want
23 to do about timing?

24 MR. TURNER: Let's just stop. This is a good
25 stopping point. Oh, can I do one thing in about 30 seconds?

SIDEBAR CONFERENCE

1414

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THE COURT: Yeah.

(End of sidebar conference.)

(Continued on the next page.)

A. SPITZEN - DIRECT/MR. TURNER

1415

1 MR. TURNER: May I proceed?

2 THE COURT: Yes.

3 MR. TURNER: I don't remember the --

4 INTERPRETER: I do. Shall I interpret the
5 question?

6 MR. TURNER: Yes.

7 THE WITNESS: Indeed.

8 BY MR. TURNER:

9 Q Now, based upon the work that you've done and the
10 investigation that you've done, and we're going to go into
11 this in much more detail on Tuesday, of course, individually
12 account-by-account; how confident are you that these Hamas
13 leaders and operatives maintain a bank account were
14 customers of Arab Bank during the period of 2000 through
15 2002?

16 A With a high degree of probability.

17 MR. TURNER: That's a good stopping point, your
18 Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 we're going to send you home early to prepare for the
21 holiday weekend.

22 Because it's a long weekend, I want to give you a
23 full reminder; bear with me as I do that. You have been
24 fantastic. I'm really proud of you, the way you have
25 discharged your responsibilities. I check jurors all the

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1416

1 time to make sure everyone is paying attention, and I
2 haven't had to say anything to anybody, because you all are
3 paying attention.

4 Please, for that reason, it's very important that
5 we not do anything to jeopardize this trial going into this
6 long break. So, please, do not look at any radio or TV
7 reports, turn the page, flip the channel, do something to
8 stay away from any information. Do not talk to anyone about
9 the case, even though you may be tempted to do that. You
10 may also be tempted to go on to Google and do some research
11 or something. Please, it would violate your oath to do
12 that. Don't post anything on any website about the case.
13 Don't say anything to anyone.

14 Those of you who are not vegetarian, have a good
15 barbecue this weekend and get some sleep, and we're really
16 making good progress and we'll see you next Tuesday at
17 9:30 a.m.

18 Remember, we're sitting next Friday as well.

19 (Jury is out of the courtroom at 3:31 p.m.)

20 THE COURT: All right, everyone, have a very good
21 holiday. See you on Tuesday morning.

22 ALL COUNSEL: You too, your Honor. Thank you.

23 (Proceedings adjourned at 3:32 p.m.)

24 ***

25

I N D E X

WITNESS

PAGE

ARIEH DAN SPITZEN

DIRECT EXAMINATION BY MR. TURNER

1390

E X H I B I T S

Plaintiff Exhibit 1353

1400

Plaintiff Exhibit 90

1406

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